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#18

In re Application of Danish et al.
Serial No.: 09/467,530
Filing Date: December 20, 1999
For: Winshield Wiper Motor with
Molded sleeve and Thrust Elements

SEP 17 2002

DECISION ON PETITION
UNDER 37 CFR 1.144

This is a decision on the petition filed December 21, 2001, pursuant to the provisions of 37 C.F.R. § 1.144 to reconsider the restriction requirement. Petitioner urges that the restriction requirement is improper and should be withdrawn. The Petition fee of \$130 has been paid. No additional fees are required.

The petition is **denied**.

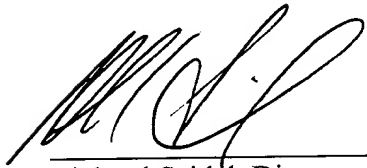
A review of the record reveals the following. The examiner issued a restriction requirement between claims 1-7(group I) and claims 8-14(group II) and provided reasons for restriction, see paper No. 6 mailed March 15, 2001. Petitioner provisionally elected Group I for further prosecution with traverse. Claims 1-7 received an action on the merits in the Office action mailed March 15, 2001. Petitioner's response amended claims 1-8, 10-14 and added new claims 15-28. A Final Office Action was mailed September 24, 2001, wherein the examiner maintained the restriction requirement and claims 8-14 and 19-24 were withdrawn from further consideration.

Petitioner has not established within the meaning of 37 CFR 1.111(b) and 37 CFR 1.144 sufficient reason to withdraw the restriction requirement. The restriction requirement, mailed March 15, 2001, clearly provides an appropriate explanation for insisting on restriction between the inventions of Group I and Group II(MPEP § 808.02). Group I and Group II have been shown to have a separate classification as well as the inventions are shown to be distinct as being a Process of Making and Product Made (MPEP § 806.05(f)).

According to 37 C.F.R. 1.143, the applicant is required to specifically point out the reasons on which he or she bases his or her conclusions that a requirement to restrict is in error. Petitioner challenged the restriction requirement in the Amendment filed June 25, 2001, but did not point out any reasons why the restriction requirement was in error. Applicant's discussion focused on the addition of claims 23-24 as linking claims highlighting that the claims are directed to a "single inventive concept". It should be noted that the "single inventive concept" is a standard applied to international applications under the Patent Cooperation Treaty and not relevant to U.S. Restriction practice.

Furthermore, applicants have not established how claims 23-24 link the distinct inventions of Groups I and II. Applicant's statements that the claims are linking are conclusive in nature and lack supporting explanations. In the instant case, it is not clear how claims 23-24 can be construed to be linking claims in view of the most common types of linking claims as set forth in MPEP 809.03.

For the above reasons, the Restriction requirement is considered proper. The application will be forwarded to the examiner for action on the Appeal Brief in due course.

A handwritten signature in black ink, appearing to read 'R. Seidel', is positioned above a horizontal line.

Richard Seidel, Director
Examining Group 2800
Industrial Electronics, Physics,
and Related Elements

RS/NRR:nrr

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